

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Tawanda Blair, on behalf of I.L.B., )  
Plaintiff, ) Civil Action No. 8:11-2099-RMG  
vs. )  
Michael J. Astrue, Commissioner of )  
Social Security, ) ORDER  
Defendant. )  
\_\_\_\_\_  
)

This matter comes before the Court on a motion to dismiss filed by the Defendant Commissioner of Social Security on the basis that this Court has no jurisdiction because Plaintiff failed to exhaust her administrative appeal remedies and, thus, did not obtain a judicially reviewable “final” agency decision. (Dkt. No. 21-1 at 5). Defendant asserts, without contest, that Plaintiff failed to timely file a request for reconsideration within 60 days following an initial adverse determination, as required by 20 C.F.R. § 404.907. Plaintiff did subsequently submit to the Commissioner a request to be excused from untimely filing but the Commissioner declined to grant the request, reportedly failing to find “good cause” for the untimely response. (Dkt. No. 21-2 at 5).

This matter was referred to the Magistrate Judge for pre-trial handling pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C. The Magistrate Judge issued a Report and Recommendation on February 29, 2012 recommending that the Commissioner’s motion to

dismiss be granted because the District Court had no jurisdiction to review a denial of Social Security benefits where the claimant has failed to exhaust her administrative appeal remedies. (Dkt. No. 30 at 4-5). Plaintiff was advised by the Magistrate Judge that she had 14 days from the date of service of the Report and Recommendation to file written objections to the Magistrate Judge's decision and no objections were thereafter timely filed by Plaintiff. (Dkt. No. 30-1).

The Court is mindful that this appeal was brought on behalf of a minor child by her parent *pro se*, and it is reasonably obvious from the hand written submissions of Plaintiff that she has no specialized expertise or training in law or in the processing of Social Security claims. The record, however, contains no dispute that Plaintiff failed to timely submit a request for reconsideration following the initial denial of disability by the Social Security Administration. It is well settled in the Fourth Circuit that a failure to exhaust all administrative appeal remedies in a Social Security disability claim results in no final decision by the Commissioner and "thus no jurisdiction for judicial review of the merits of [the claimant's] disability claim . . .". *Adams v. Heckler*, 799 F.2d 131, 133 (4th Cir. 1986).

Based upon the foregoing, the Court hereby **ADOPTS** the Report and Recommendation of the Magistrate Judge (Dkt. No. 30) and **GRANTS** Defendant's motion to dismiss (Dkt. No. 21).

AND IT IS SO ORDERED.



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Richard Mark Gergel  
United States District Judge

Charleston, South Carolina  
March 24, 2012